Caseload and Challenges

5.1 For the year 2002/03, our reporting period was adjusted for the first time, to run from 1 April to 31 March to coincide with the financial year. This report, therefore, covers 12 months - not 10 $^{1}/_{2}$ months for last year[2].

Caseload

5.2 Caseload for the year is summarised below:

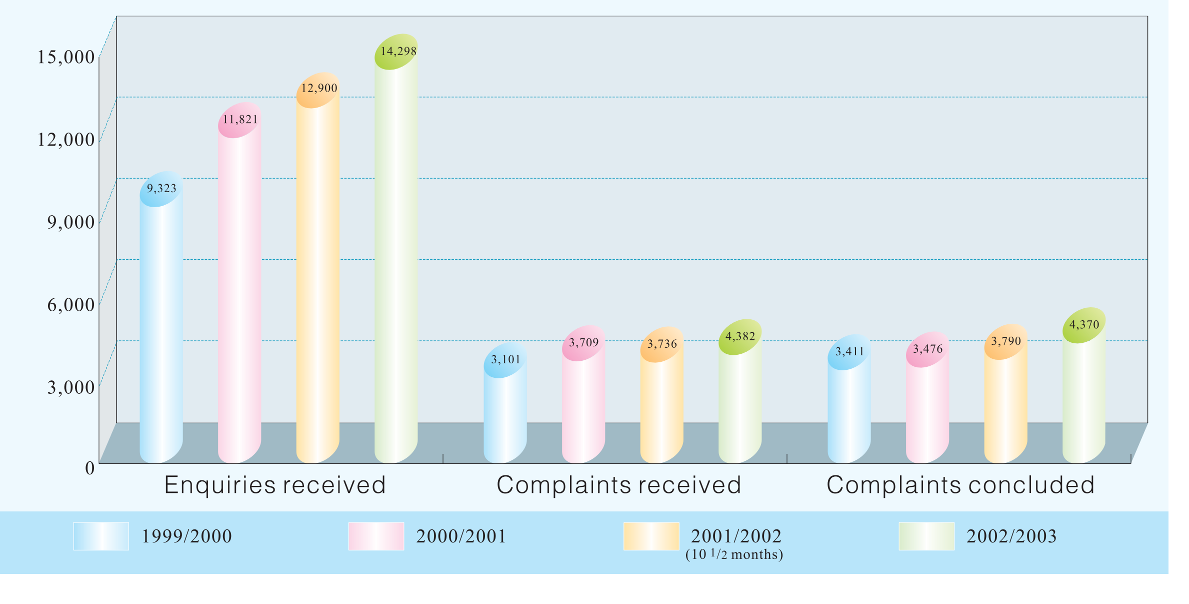
- 14,298 enquiries received;
- 4,382 complaints received; and
- 4,370 complaints concluded.

There was a slight increase in in-coming complaints for the year despite a decrease since February 2003. It is difficult to ascertain why there should be a drop but some contributing factors come to mind: the Lunar New Year festive period followed by community pre-occupation with "Severe Acute Respiratory Syndrome" (SARS).

5.3 There were 20 complaints outstanding with the Hospital Authority by 31 March 2003 and I have given them extension of time for response in recognition of the need for concentrating efforts on the combat against SARS. We have informed the complainants and they have generally shown understanding of this exceptional situation.

2 The last report was for 16 May 2001 to 31 March 2002 on re-alignment of reporting period due to delinking from Government systems and practices. Previously, the reporting period was from mid-May to mid-May of the following year.

Fig. 5.1 **Equiries and complaints for the past four years**



PERFORMANCE PLEDGES

5.4 Our performance pledges are set out below :

Fig. 5.2 Performance pledges

Enquiries

	Standard response time	Maximum response time
By telephone or in person	Immediate	For complicated enquiries, within 30 minutes
In writing	Within 5 working days	For complicated enquiries, within 6-10 working days

Complaints

	Standard response time	Maximum response time
Initial assessment and acknowledgement	All complaints will be initially screened and acknowledged -	
	Within 5 working days (target: 80%)	Within 6-10 working days (target:20%)
Cases concluded	Acknowledgment with a full reply declining investigation will be sent -	
- Cases outside jurisdiction or under restriction	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)
- Other cases	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)

Group visits and talks

	Response time
Requests for guided group visits	Within 5 working days
Requests for outreaching talks	Within 10 working days

As our performance pledges have remained unchanged, the heavier caseload (particularly during the first half of the reporting year) has exerted greater pressure on my investigation teams. Notwithstanding this pressure, we have endeavoured to complete cases within the pledges and have made improvement. The number and percentage of completed cases not meeting the performance pledges during the reporting period are 75 (or 2.84%), compared to 206 (or 9.3%) respectively for the previous reporting year. The contributing features included:

(a) highly complex cases necessitating more elaborate investigation process;

(b) suspension of investigation as a result of court proceedings or law enforcement action;

(c) emergence of new developments mid-stream; and

(d) challenges, as described in the following paragraphs.

5.5 To overcome seasonal peaks, I have continued to engage temporary case officers. These are officers with extensive experience in public administration and are trawled from a continuous recruitment process. The flexibility afforded by such insures that I can draw from a pool of ready expertise for relief at times of particular pressure. Temporary case officers are remunerated on the basis of the number and complexity of their assignments. They are subject to the same code of ethics and the strict secrecy requirement as for my full-time staff.

CHALLENGES

5.6 Organisations and complainants occasionally challenge our decisions or actions. Such challenges spread virtually across all stages of our operations, as outlined below.

Jurisdiction

5.7 Organisations at times challenge the propriety of our intervention, occasionally with legal arguments. This is particularly so where the issues stem from restrictions in Schedule 2 to The Ombudsman Ordinance, eg. personnel or contractual matters. We would examine only such administrative aspects as may be present in those cases. Organisations would then query why we take up the case at all. Invariably, we simply address aspects of procedures and practices. We are careful not to over-step our purview. By this prudent but liberal approach, I hope to maximise our contribution to open government and minimise injustice to the common citizen.

5.8 On the other hand, complainants sometimes question my decision to screen out their cases. Although we give specific reasons as to why we cannot pursue their cases, some complainants just would not accept that their issues fall outside our jurisdiction. Wherever practicable, we redirect them to the appropriate authorities or channels for advice, assistance or redress. All proposals to screen out complaints are approved by me personally.

Evidence Collection

5.9 In the course of our inquiries, organisations may refuse to provide material

for our examination, notably on grounds of secrecy or data privacy. We will always explain our statutory right to access any information relevant to a case. I am grateful that all organisations generally co-operate with my Office, although occasionally with some persuasion. I have not had to summon witnesses during the reporting period.

Decisions

5.10 I am required by law to inform organisations, normally in the form of draft investigation reports, of any criticism or adverse remarks against them or their staff. Now and then, organisations raise reservations or even take exception to our observations, especially when the complaints are substantiated. Page after page of contentions and counter-points, followed by lengthy hearings, are common fare for my investigation officers. We always provide organisations and their officers ample opportunities to make representations, which we critically examine before finalising our conclusions. Where their representations are reasonable, we incorporate them into the final report. Where they cannot be accepted, we still record their comments with reasons for non-acceptance.

Revived Cases

5.11 From time to time, complainants are dissatisfied with our investigation results, particularly if their complaints are found to be unsubstantiated. In their disappointment, some have raised allegations against individual investigation officers, for being biased, incomplete or incompetent. Quite a few request for review of their cases. As all investigation reports are subject to my personal approval, such allegations can only be seen as complaints against my decisions, not my officers.

5.12 We treat each and every objection as an appeal. We review the case for any fresh evidence or new angle. We apply special procedures in handling revived cases. Generally speaking, whilst an initial investigator will be required to comment on the complainant's grounds for review, the actual review will be carried out by another investigation officer or by the Chief Investigation Officer. As a general rule, draft replies to requests for review are scrutinised by my Deputy and finally by me before issue.

5.13 In the reporting period, we received 280 requests for review, compared to 237 in

Fig. 5.3 **Revived cases**

Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	3	-	2	-	-	5
Decision upheld	-	234	-	-	41	275
						280

the last reporting period of 10 1/2 months. Most complainants simply reiterated their arguments and expressed dissatisfaction over our conclusions. Where they produced new materials, we studied afresh.

5.14 Factors prompting complainants to seek review may be summarised as follows :

(a) rising expectations of the quality of public services;

(b) an intuitive conviction that their complaints are justified;

(c) an expectation that The Ombudsman should advocate a complainant's cause only; and

(d) a desire to put pressure on organisations concerned.

A few persistent complainants have chosen to voice their discontent and objections through a continuous stream of letters or by numerous daily telephone calls to my staff at different ranks. We understand, and even sympathise, with their sentiments. However, our primary duty is to ensure fairness to both the complainants and the organisations concerned. This is the spirit of the Ordinance and the intent of our institution. It does not accord with justice or a proper use of public resources to enter into endless debate over the same points. As a general rule, we will review on the basis of new evidence or fresh arguments but do not respond indefinitely to repeated requests for review of my decision.

Our View

5.15 In general, we regard challenge of our views or conclusions as a healthy reminder to sharpen our vigilance and to enhance our professionalism. We endeavour always to ensure that our investigations are thorough and impartial. We are ready to take a further look at objective facts from different angles. However, what we cannot do is to bow to pressure, submit to irrationality or aid and abet in personal vendetta: such "use" of the complaint system, in our view, is tantamount to misuse or even abuse.

"Use" of The Ombudsman System

5.16 In my last report, I alluded to "some complainants have their own agenda and 'use' my Office to press for their desired outcome". Broadly speaking, such cases may be grouped as follows :

(a) seeking to bypass normal administrative processes and to obtain from a department/agency certain personal gains to which, on the face of it, the complainant is not entitled;

(b) seeking to stop enforcement actions or investigations by law enforcement agencies;

(c) seeking to involve regulatory authority to intercede on his behalf with commercial service providers;

(d) using departments or agencies as a tool in pursing personal vendetta against third parties; and

(e) using the complaint procedures to delay departmental actions.

5.17 If these attempts are allowed to go unchecked, it could have the following undesirable consequences :

(a) creating unfairness for other citizens - given that public resources are limited, allowing someone to "jump the queue" or obtain undeserved personal gains would necessarily mean that someone else is being deprived of his right;

(b) creating a new form of maladministration - bowing to pressure to the point of disregarding policies, as opposed to being unreasonably rigid; and

(c) creating disruption to services - the nuisance caused by the persistence and unreasonableness of a small handful of complainants could seriously disrupt the operation of a department/agency.

5.18 There are still some cases of apparent "abuse" but the situation is not serious. During the reporting year, there were at least 20 cases which in our view contained irrational agendas. We processed these complaints in the usual manner and with an open mind. In the event of our system being misused, we would not hesitate to make the point to the complainant and the organisation concerned.

Fig. 5.4 **Some examples**

Case A

- An accountant complained against the Companies Registry (CR) for mishandling applications filed on behalf of his clients.
- After due inquiry, The Ombudsman rejected his claim for lack of credible evidence and for the complainant's own misinterpretation of section 291 of the Companies Ordinance.
- Complainant thereafter wrote in 26 times to seek reversal of the decision but still produced no acceptable argument in support.
- Both CR and The Ombudsman advised him to seek determination from the Courts on the issues in dispute.
- Renewed efforts to engage this Office in endless debate, evidently to put pressure on CR.

Case B

- Housing Department (HD) launched two phases of Phased Service Transfer Programme (PSTP) for property management contracts together with the Voluntary Departure Scheme (VDS) for its staff.
- Successful bidders of outsourcing contracts under PSTP had to employ a quota (staff count) of VDS participants, who in turn would be given a "sign-up bonus" by HD under certain conditions.
- Complainant had left HD under VDS and claimed he could not find employment during the first phase of PSTP because HD had not issued to him a "Certificate of First Staff Count".

He tried to put pressure on HD to award him with a sign-up bonus by complaining to this Office.

- HD had never issued any "Certificate of First Staff Count". Case totally unfounded.

(Case summary at **Annex 10**)

Case C

- A subscriber involved in a fee dispute for mobile telephone service claimed that his service provider "threatened" him to pay up on three occasions.
- He was charged a total of $3.60 for three calls.
- He complained to the Office of the Telecommunications Office (OFTA) but allegedly to no avail.
- Inquiry by The Ombudsman confirmed that OFTA had actually and actively pursued the case by writing to or calling the service provider over 14 times.
- Complainant had been kept informed of progress.
- The service provider also agreed to waive the $3.60 charges.
- Complainant should have raised the matter under the terms of his service agreement with the service provider. He should have considered seeking assistance from the Police if in genuine belief of falling victim to criminal intimidation.

(Case summary at **Annex 10**)

Case D

- Complainant felt greatly embittered at his unsuccessful attempt to request a song to be broadcast in a Radio Television Hong Kong (RTHK) mid-night programme.
- The song was aired two days later but complainant remained dissatisfied.
- Complainant thereafter staged a telephone campaign against RTHK staff concerned including those in the directorate for explanation to his satisfaction.
- Feeling that RTHK had ignored the matter, complainant turned to The Ombudsman for assistance.
- Due inquiry revealed no administrative impropriety by RTHK.
- A similar telephone campaign then began against staff of The Ombudsman with some calls lasting for over an hour.
- The Ombudsman eventually decided not to pursue further complaints over the matter because its trivial nature.

(Case summary at **Annex 10**)

Case E

- A prisoner complained against Legal Aid Department (LAD) for failing to inform him of the progress of his legal aid application.

- He applied for legal aid to claim damages for medical negligence. In his initial application, he signed all documents, including a statutory declaration, in the name of A.

- When he applied for a medial report from the hospital concerned, he produced a copy of Mr. B's identity card, which was not accepted by LAD as proof of his identity.

- Complainant alleged that his name was in fact C, with A as pseudonym and B the name of his brother; but he could not produce any documentary evidence to show that he was C.

- When he produced a copy of Mr. C's identity card, LAD told him to re-apply in the name of C.

- LAD was not able to inform him of progress, because it was still investigating into his identity.

- Eventually, LAD refused A's application on the grounds that the personal details in the application form did not tally with the proof of identity.

- LAD also informed C that his application would be rejected on grounds of failure to show reasonable grounds for taking proceedings.

(Case summary at **Annex 10**)